



## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of

La Crosse County Department of Human Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 192014

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Pursuant to petition filed January 15, 2019, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the La Crosse County Department of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Wednesday, February 27, 2019 at 09:30 AM at La Crosse, Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
La Crosse, WI 54601

Respondent:

██████████  
██████████  
██████████

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**ADMINISTRATIVE LAW JUDGE:**

Nicole Bjork  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. The respondent (CARES # ██████████) is a resident of La Crosse County who received FS benefits in La Crosse County from December 1, 2017 through March 31, 2018.

2. In May 2015, the respondent completed a FS renewal and signed the form stating that he understood the penalties for providing false information or violating FS rules and regulations.
3. The respondent received FS benefits every month from January 2015 through May 2018, with the exception of the period between May 2016 through September 2016. During the time that he received FS benefits, he completed annual reviews to continue receiving FS benefits and claimed to be homeless during each review and renewal, which occurred on October 12, 2016, April 3, 2017, June 19, 2017 and November 2, 2017.
4. On April 28, 2016, the respondent received a notice from the agency stating that his FS benefits were ending due to not meeting work requirements and that he had already used the three months of time limited benefits.
5. Petitioner began receiving FS benefits again in October 2016. From September 3, 2017 through March 5, 2018, all of the respondent's FS benefits were spent in [REDACTED] Minnesota.
6. On February 7, 2018, the agency received a lease signed by the respondent, despite the respondent claiming to be homeless. The agency contacted the landlord of the property, located in La Crosse, Wisconsin, and the landlord confirmed that the respondent resided in the property with a woman, [REDACTED].
7. On February 14, 2018, the respondent was interviewed by the agency. The respondent again claimed that he was homeless. That same day, [REDACTED] went to the agency and confirmed that she resided at the property noted in Finding of Fact #6 with the respondent and that respondent was not homeless.
8. The respondent also indicated that he was unemployed, including between the period between December 2017 and January 2018. Because he was unemployed, he was required to seek out and apply for employment in order to continue receiving benefits. The respondent was required to complete an employment search log, which he did. The employment search log completed by the respondent states that he was visiting employers to apply for a job on December 14, 2017 at 3:15 pm, December 11, 2017 at 2:58 pm, January 9, 2018 at 3:48 pm, and January 12, 2018 at 3:01 pm. During those exact same times, the respondent's FS EBT card was used for transactions in [REDACTED] Minnesota.
9. Since the respondent could not have been using his FS card in [REDACTED] while he was applying for employment in Wisconsin, the agency initiated a FS overpayment against the respondent.
10. On March 15, 2018, the agency established a FS overpayment claim against the respondent due to FS trafficking his benefits to some individual in [REDACTED] Minnesota, falsifying employment search logs, and for incorrectly claiming to be homeless. The respondent did not appeal the overpayment.
11. On January 16, 2019, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent trafficked FS benefits to a person in Minnesota from July 2017 through March 31, 2018, misrepresenting his living situation by claiming to be homeless, and falsified his employment search log.
12. The respondent failed to appear for the scheduled February 27, 2019 Intentional Program Violation (IPV) hearing and did not provide any good cause for said failure to appear.

### **DISCUSSION**

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;  
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, § 3.14.1; *see also* 7 C.F.R. § 273.16(c) and Wis. Stat. §§ 946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing, *FoodShare Wisconsin Handbook*, § 3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified on grounds involving the improper transfer of FS benefits are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. § 273.16(b).

7 C.F.R. §273.16(e)(4) provides that the hearing shall proceed if the respondent cannot be located or fails to appear without good cause. The respondent did not appear or claim a good cause reason for not attending the hearing. Therefore, I must determine whether the respondent committed an IPV based solely on the evidence that the petitioner presented at hearing.

In order for the petitioner to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. § 273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. ...

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

In order to prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See, *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus, there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

In this case, the respondent's FS card was used in [REDACTED] Minnesota while he claimed to be applying for employment in Wisconsin. Either the respondent was lying about applying for employment, which is a violation of FS program policy 3.17.1.1, and was actually in [REDACTED] purchasing food, or he trafficked his FS card to an individual in [REDACTED] Minnesota. Under either scenario, the respondent intentionally violated FS rules and regulations. Further, the respondent claimed that he was homeless, but the agency obtained a lease demonstrating that the respondent actually resided in an apartment. This lease was corroborated by a conversation with the landlord and with [REDACTED], the other person on the lease that resided in that apartment.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. Therefore, the petitioner correctly seeks to disqualify the respondent from the FS program for one year.

#### **CONCLUSIONS OF LAW**

1. The respondent violated, and intended to violate, the FS program rule specifying that a participant may not misrepresent eligibility to receive or attempt to receive FS benefits that he was not entitled to or engage in trafficking or fraudulent use of FS benefits.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

**NOW, THEREFORE**, it is

**ORDERED**

That the petitioner's determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

#### **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

#### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1

West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

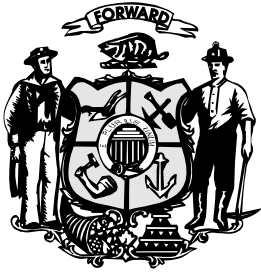
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 22nd day of March, 2019

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\sNicole Bjork  
Administrative Law Judge  
Division of Hearings and Appeals

c: Western Region For Economic Assistance - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
[REDACTED] - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 22, 2019.

La Crosse County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[REDACTED]